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January 25, 2007

Our File No. 20939-0101-60

**ELECTRONIC FILING**

Ms. Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., TW-A325  
Washington, D.C. 20554

Re: **Comments of Larry L. Schrecongost**  
Advanced Television Systems  
And Their Impact upon the  
Existing Television Broadcast Service  
**MB Docket No. 87-268**

Dear Ms. Dortch:

Transmitted herewith on behalf of Larry L. Schrecongost, licensee of WLLS, Indiana, Pennsylvania, are his Comments in the above-referenced matter.

If there are any questions concerning this submission, please contact the undersigned directly.

Sincerely,



John M. Pelkey

Enclosures  
JMP:yg

DC\_DOCS:660648.1

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Advanced Television Systems	)	MB Docket No. 87-268
and Their Impact upon the	)	
Existing Television Broadcast	)	
Service	)	

**COMMENTS OF LARRY L. SCHRECONGOST**

Larry L. Schrecongost, licensee of Class A television Station WLLS, Indiana, Pennsylvania ("WLLS"), hereby submits his comments with respect to the *Seventh Further Notice of Proposed Rule Making* (the "*Seventh Further Notice*") issued by the Commission in MB Docket No. 87-268. In that *Seventh Further Notice*, the Commission requested that parties provide comments with respect to any inaccuracies or discrepancies in the proposed new DTV Table of Allotments that is appended to the *Seventh Further Notice* as Appendix A.<sup>1</sup> WLLS is a class A television station operating in Indiana, Pennsylvania. The station operates on Channel 49 from a licensed transmitter site located just to the west of Indiana, Pennsylvania. WLLS hereby accepts the Commission's invitation so as to bring to the Commission's attention the fact that the proposed table incorrectly specifies that DTV Channel 49, rather than DTV Channel 30, is

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<sup>1</sup> *Further Notice* at ¶ 16.

allocated to Jeannette, Pennsylvania. As a result, the table cannot be adopted in its present form. In support of these comments, WLLS states as follows:

### **I. The Change in WPCW's Community of License.**

In January 1996, Venture Technologies Group, Inc. ("Venture"), which was then the licensee of a television station operating under the call sign of WTWB-TV, Johnstown, Pennsylvania, petitioned the Commission to initiate a rule making that would change the community of license of the station (which now operates under the "WPCW" call sign)<sup>2</sup> from Johnstown, Pennsylvania, to Jeannette, Pennsylvania. Crucial to that rule making was Venture's explicit representation to the Commission that its proposal would in no way affect the DTV Table of Allotments. The importance of this representation stems from the fact that, at the time that the rule making was initiated, a freeze was in place that prevented consideration of any rule making that affected the DTV Table of Allotments.<sup>3</sup> Thus, in its Comments filed in MM Docket No. 97-96 on May 12, 1997, Venture represented to the Commission that its proposed change in community of license would have "no impact on the DTV Table. In particular, the DTV Table allots Channel 30 in place of [NTSC] Channel 19 at Johnstown at the existing transmitter site. The proposed change in the community of license to Jeannette is consistent with the use of Channel 30 at the same site as specified in the DTV Table."<sup>4</sup> It is upon this representation that the Commission was persuaded to accept, and eventually adopt, Venture's proposed rule making. Thus, in the *Report and Order* adopting Venture's proposal, the Commission explained, "We have determined that the allotment of Channel 19+ to Jeannette, Pennsylvania, will have no

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<sup>2</sup> WTWB-TV has operated under three different call signs over the last 12 years. To avoid confusion, these Comments will refer to the station by its present call sign of WPCW.

<sup>3</sup> *Sixth Further Notice of Proposed Rule Making*, MM Docket No. 87-268, 11 FCC Rcd 10968, 10992 (1996).

<sup>4</sup> *Johnstown and Jeannette, PA*, MM Docket No. 97-96, Comments of Venture Technologies Group, Inc., at 2.

impact on the draft DTV allotment table because the proposal does not result in a new allotment but merely the reallocation of an existing allotment with no change in the transmitter site.”<sup>5</sup> Indeed, when the Commission issued its *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87-268, Appendix B to that decision, although mistakenly continuing to refer to WPCW’s community of license as Johnstown, correctly paired analog Channel 19 with DTV Channel 30 and specified, as coordinates for the DTV allocation, precisely those coordinates that Venture had warranted would not be changing and that were the same coordinates specified by the Commission for Channel 19 in the 1997 *Report and Order* adopting the change in WPCW’s community of license.<sup>6</sup> With the change in WPCW’s community of license to a community located within the Pittsburgh DMA, WPCW became entitled to carriage on the Pittsburgh cable systems.

## **II. WPCW’s Attempt to Change Channel in Contravention of the Community Broadcasters Protection Act.**

On August 25, 1999, a date that was more than 18 months after the Commission’s reconsideration of the *Sixth Report and Order* and nearly seven months after it had become license of WPCW, Paramount Stations Group of Pittsburgh, Inc. (“Paramount”) filed a petition for rule making in which it sought to modify the station’s DTV allotment from Channel 30 to Channel 49 and to change the station’s digital community of license from Johnstown to Jeannette. The Paramount petition for rule making was inexplicably silent as to why WPCW had waited until some 18 months after the issuance of the DTV Table of Allotments to seek a change in the DTV Table of Allotments so that the digital community of license would be the same as the analog community of license.

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<sup>5</sup> *Johnstown and Jeannette, PA*, MM Docket No. 97-96, 12 FCC Rcd 10300, 10301 (1997).

<sup>6</sup> Compare 13 FCC Rcd 7695 with 12 FCC Rcd 10301.

Even more significant than Paramount's failure to explain its tardiness in seeking to change WPCW's community of license as specified in the DTV Table of Allotments was Paramount's failure to file any form of digital facilities application for WPCW. Shortly after Paramount filed its Petition for Rulemaking seeking to allocate Channel 49 to Jeannette, Congress adopted the Community Broadcasters Protection Act of 1999 ("CBPA"), which was signed into law on November 29, 1999.<sup>7</sup> As the Commission pointed out in its *Report and Order* in MM Docket No. 00-10, in which the Commission established the rules for the Class A service, the purpose of the CBPA was to provide protection to certain low power television stations which, as the Commission explained, often provide service to rural communities.<sup>8</sup> Specifically, the adoption of the CBPA gave certain LPTV stations known as Class A licensees "primary" status as television broadcasters, with the result that they were to be protected from interference by full-service stations.<sup>9</sup>

Although both the CBPA and the Commission's rules implementing the CBPA recognized that full-service stations might desire to maximize their service areas, both the statute and the rules provided that Class A stations would be required to provide protection to a full-service station's maximized facilities only if the full service station filed a notice, by December 31, 1999, informing the Commission of its intent to seek maximized facilities and then followed through on that notification by filing a bona fide maximization application by May 1, 2000.<sup>10</sup> It is undisputed that WPCW failed to file the requisite maximization application and, in fact, did

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<sup>7</sup> Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 - 1501A-598 (1999), codified at 47 U.S.C. § 336(f).

<sup>8</sup> *Establishment of a Class A Television Service*, MM Docket No. 00-10 (the "*Class A Order*"), 15 FCC Rcd 6355, 6357 (2000), *recon.*, 16 FCC Rcd 8244 (2001).

<sup>9</sup> 15 FCC Rcd at 6357.

<sup>10</sup> See 47 USC §336(f)(1)(D); *Class A Order*, 15 FCC Rcd at 6376.

not file any form of DTV facilities application until the woefully late date of May 10, 2006.<sup>11</sup>

Because WPCW failed to file the requisite maximization application, it not only was not entitled to protection by WLLS, but it was required to protect WLLS.

Despite the CBPA's requirement that WPCW protect WLLS, Pittsburgh Television Station WPCW Inc., a CBS entity which became the licensee of WPCW subsequent to the merger of Paramount's parent (Viacom) and CBS, has pursued a rule making, MB Docket No. 05-52, that seeks to substitute DTV Channel 49 for Channel 30 at Jeannette and that seeks the establishment of reference coordinates some 35 miles from the reference coordinates established by the Commission for WPCW in the *Sixth Report and Order*. Operating on Channel 49 from either the reference coordinates sought by WPCW or from the reference coordinates established in the *Sixth Report and Order*, WPCW would interfere with protected co-channel WLLS.

The MB Docket No. 05-52 proposal is, of course, in contravention of the CBPA inasmuch as it seeks to inflict interference on WLLS even though WPCW failed to file the requisite maximization application by May 1, 2000. There is a second reason, however, why the WPCW proposal violates the CBPA. Specifically, the CBPA permits the Commission to make modifications to a channel assignment or allotted parameters necessary to permit a full-service

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<sup>11</sup> WPCW's failure to file a maximization application is consistent with its cavalier treatment of the statute's and the Commission's DTV requirements. In seeking to ensure that the public would be able to receive the benefits of high definition television as expeditiously as possible, the Commission established a series of deadlines to be met by any television station seeking to provide high definition service. Despite the Commission's meticulous attention to these deadlines, WPCW simply failed to observe any of them. WPCW should have filed a DTV application by November 1, 1999, and acknowledged this requirement in its August 25, 1999 Petition for Rulemaking. It nevertheless failed to meet this deadline. WPCW-DT should have been constructed by May 1, 2002. It failed to meet this deadline. Because of the importance of ensuring that digital facilities were constructed as quickly as possible, the Commission prescribed that the Chief, Media Bureau, was authorized to grant only two extensions of time to construct the required digital facilities and each extension could extend the construction deadline by no more than six months. Any television station that failed to construct its digital facilities within the second six month extension was required to file yet a third extension application and this extension application was to be acted upon by the Commission itself. WPCW, of course, failed to file any such extension requests.

The required deadline for the filing of WPCW's digital application passed more than seven years ago. The deadline by which WPCW was required to have commenced digital service passed nearly five years ago. Despite these deadlines, WPCW, in defiance of all Commission rules, never even started the digital application process until May 2006. WPCW has never constructed any DTV facilities.

station to maximize its service area only if the modifications are necessary in the event that “technical problems” arise.<sup>12</sup> Significantly, the current licensee of WPCW has never alleged the existence of such technical problems. In fact, no technical problem exists. As a result, a key precondition to any Commission action depriving WLLS of the protection accorded it under the CBPA has not been met.<sup>13</sup>

Despite WPCW’s failure to file the requisite maximization application or to cite any technical problems requiring a change in the station’s channel assignment, a *Report and Order* released by the Commission in MB Docket No. 05-52 on February 15, 2006 (the “*February 2006 Report and Order*”) adopted WPCW’s proposed rule changes and thus allotted Channel 49 to Jeannette in lieu of Channel 30.<sup>14</sup> It also established reference coordinates for the Channel 49 allotment that are 35 miles away from the reference coordinates adopted by the Commission in the *Sixth Report and Order*.<sup>15</sup>

### **III. WLLS’s Petition for Reconsideration.**

Because the substitution of Channel 49 for Channel 30 at Jeannette would cause ruinous interference to WLLS and thus deprive it of the primary status granted it by the CBPA, WLLS

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<sup>12</sup> 47 USC §336(f)(1)(D).

<sup>13</sup> Even if such a technical problem arises, the Commission cannot adopt changes to the full-service station’s allotted parameters or channel assignment unless the licensee of the full-service station filed a maximization application by May 1, 2000. See 47 USC 336(f)(1)(D).

<sup>14</sup> *Johnstown and Jeannette, Pennsylvania*, 21 FCC Rcd 1350 (2006).

<sup>15</sup> The *February 2006 Report and Order* claimed that the change in WPCW’s channel assignment was necessary because of a technical problem arising from the fact that WPCW’s Channel 30 allotment created a first-adjacency situation with Channel 29 in Johnstown, Pennsylvania. In fact, however, the Channel 29 allotment at Johnstown and WPCW’s Channel 30 allotment are for collocated facilities, with the result that no technical problem arises. The perceived technical problem arose only as a result of the *February 2006 Report and Order*’s determination to change the WPCW reference coordinates so that WPCW could move closer to its target community of Pittsburgh. The “technical problem” was thus a manufactured problem. In any event, Channel 29 is no longer allotted to Johnstown. As is set forth in the proposed DTV Table of Allotments appended to the *Seventh Further Notice*, Channel 8 has now been allotted to Johnstown in lieu of Channel 29.

sought reconsideration of the Commission's *February 2006 Report and Order*. In its Petition for Reconsideration, WLLS pointed out not only that the allotment of Channel 49 to WPCW would result in interference to WLLS in contravention of the CBPA, but it also pointed out that the sole "technical problem" alluded to by the Commission in its *February 2006 Report and Order* in MB Docket No. 05-52 resulted exclusively from the fact that the Commission had established reference coordinates that were 35 miles from the reference coordinates established by the Commission in the *Sixth Report and Order*. In other words, to the extent that there was a technical problem arising from the allotment of Channel 30 to WPCW, that "technical problem" was one of the Commission's own making. WLLS's Petition for Reconsideration also explained that, because WPCW had failed to file a maximization application for its DTV facilities, the CBPA protected WLLS from any interference by WPCW. In the absence of a technical problem or the submission of a timely maximization application by WPCW, as has been emphasized in the WLLS Petition for Reconsideration, the Commission is statutorily prohibited from adopting WPCW's proposal to assign Channel 49 to WPCW.

#### **IV. The Seventh Further Notice Incorrectly Specifies Channel 49 as WPCW's DTV Allotment.**

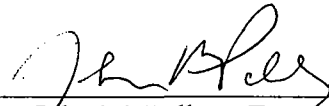
Although the WLLS Petition for Reconsideration remains pending at this point, WLLS notes with approval the fact that the *Seventh Further Notice* has affirmed reference coordinates for the WPCW DTV facility that are the same as the reference coordinates established by the Commission in the *Sixth Report and Order* and that formed the basis for WPCW's 1997 request seeking an exemption from the freeze that was then in effect.. For the reasons set forth in WLLS's Petition for Reconsideration, however, the DTV Table of Allotments must also specify



that it is Channel 30, not Channel 49, that is to be used by WPCW. Only in that way will WLLS's rights pursuant to the CBPA be protected.<sup>16</sup>

Respectfully submitted,

LARRY L. SCHRECONGOST

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Date: January 25, 2007

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<sup>16</sup> Moreover, at the coordinates specified for Jeannette in the *Seventh Further Notice*, a facility operating on Channel 49, rather than on Channel 30 as specified in the Sixth Report and Order, would fail to comply with Section 73.623(d) of the Commission's rules. As is set forth in the Technical Analysis attached hereto, a Channel 49 facility would be short-spaced to at least three DTV facilities and two analog facilities.

**TECHNICAL EXHIBIT  
IN SUPPORT OF COMMENTS IN DOCKET NO. 87-268  
ADVANCED TELEVISION SYSTEMS AND THEIR IMPACT  
UPON THE EXISTING TELEVISION BROADCAST SERVICE**

**LARRY L. SCHRECONGOST**

**73.623(d) ANALYSIS**

**CHANNEL 49 DT AS JEANNETTE, PA ALLOTMENT AT REF COORD'S 40-10-51 79-09-46**

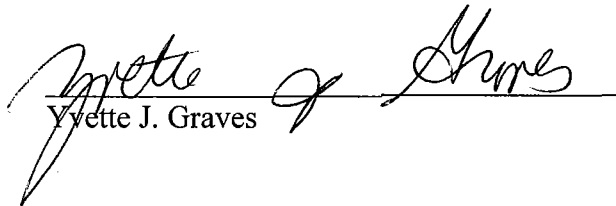
ALLOTMENT	REQ'D (Km)	ACTUAL (Km)	RESULT
PITTSBURGH PA Facility ID 73910 WPXI-DT48 <24 >110	40-27-48 80-00-16 78.111	BLCDT-20050609AAQ FAILS	
HARRISONBURG VA Facility ID 4688 WHSV-DT49 196.3	38-36-05 78-37-57 181.205	BMPCDT-20051109AAL FAILS	
GREENSBURG PA Facility ID 13924 WPCB-DT50 <24 >110	40-23-34 79-46-54 57.651	BLCDT-20030409ABC FAILS	
ALTOONA PA Facility ID 13929 WKBS-47 <24.1 >80.5	40-34-12 78-26-26 75.03	BRCT-19990401KM FAILS	
PITTSBURGH PA Facility ID 73875 WPGH-53 <24.1 >80.5	40-29-43 80-00-17 79.608	BLCT-19970919KF FAILS	

**SUMMARY:** The use of DT channel 49 at the reference coordinates 40-10-51 79-09-46 does not protect the above five allotments based upon 73.623(d) minimum geographical separation requirements.

Certificate of Service

I, Yvette J. Graves, hereby certify that on this 25th day of January, 2007, copies of the foregoing "Comments of Larry Schrecongost" have been served by U.S. first-class mail, postage prepaid to the following:

Howard Jaeckel, Esq.  
CBS Broadcasting, Inc.  
51 West 52<sup>nd</sup> Street  
New York, NY 10019

  
Yvette J. Graves

\*Via Hand Delivery